

Appendix G

The Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

MERCHANT COMMERCE, LLC, a
Connecticut limited liability company,
d/b/a MERCHANT SERVICES; and
BORIS MIZHEN, an individual, and JOHN
DOES 2 – 20,

Defendants.

No. 03-2-15706-6 SEA

JUDGMENT AGAINST DEFENDANT
MERCHANT COMMERCE, LLC

JUDGMENT SUMMARY

- A. Judgment Creditors: Microsoft Corporation
- B. Judgment Debtor: MERCHANT COMMERCE, LLC
- C. Principal Judgment Amount\$2,000,000.00
- D. Interest to Date of Judgment.....0.00
- E. Credit Against Judgment for Payments Made0.00
- F. Attorney's Fees0.00
- G. Costs0.00
- H. Other Recovery Amount0.00

- I. Principal judgment shall bear interest at 12% per annum.
- J. Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.
- K. Attorney for Judgment Creditors: David A. Bateman, of Preston Gates & Ellis, LLP.
- L. Attorney for Judgment Debtor: Russell M. Aoki, of Aoki & Sakamoto, LLP.


STIPULATION

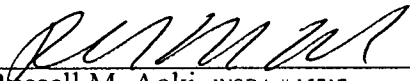
COME NOW the parties hereto, by and through their undersigned counsel of record, and stipulate to the entry of the following judgment.

DATED this 27th day of February, 2004.

PRESTON GATES & ELLIS LLP

AOKI & SAKAMOTO LLP

By 
David A. Bateman, WSBA # 14262
Theodore J. Angelis, WSBA#30300
Attorneys for Plaintiff
Microsoft Corporation

By 
Russell M. Aoki, WSBA # 15717
Attorneys for Defendants
Merchant Commerce, LLC and Boris Mizhen

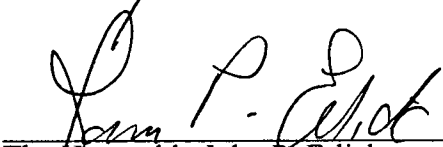
JUDGMENT

This matter came on for hearing before the Court upon the parties' foregoing Stipulation. Being duly advised in the premises herein, the Court enters judgment as follows:

1. Plaintiff Microsoft Corporation is awarded judgment against Defendant Merchant Commerce, LLC, in the amount of \$2,000,000.

2. Plaintiff Microsoft Corporation is awarded post-judgment interest at the statutory rate.

DONE IN OPEN COURT this 27th day of March, 2004.


The Honorable John P. Erlick

1 Presented by:

2 PRESTON GATES & ELLIS LLP

3
4 By 

David A. Bateman, WSBA # 14262

5 Theodore J. Angelis, WSBA#30300

6 Attorneys for Plaintiff

Microsoft Corporation

7 Notice of Presentation Waived:

8
9 AOKI & SAKAMOTO LLP

10
11 By 

Russell M. Aoki, WSBA # 15717

12 Attorneys for Defendants

13 Merchant Commerce, LLC and Boris Mizhen

The Honorable John P. Erlick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

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MERCHANT COMMERCE, LLC, a
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BORIS MIZHEN, an individual, and JOHN
DOES 2 – 20,

Defendants.

No. 03-2-15706-6 SEA

STIPULATED PERMANENT
INJUNCTION

STIPULATION

Plaintiff Microsoft Corporation ("Microsoft") and defendants Merchant Commerce, LLC and Boris Mizhen, by and through their undersigned counsel of record, hereby stipulate to the entry of the following Permanent Injunction.

DATED this 27th day of February, 2004.

PRESTON GATES & ELLIS LLP

AOKI & SAKAMOTO LLP

By 

David A. Bateman, WSBA # 14262

Theodore J. Angelis, WSBA#30300

Attorneys for Plaintiff
Microsoft Corporation

By 

Russell M. Aoki, WSBA # 15717

Attorneys for Defendants
Merchant Commerce, LLC and Boris Mizhen

STIPULATED PERMANENT INJUNCTION - 1

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ORIGINAL

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925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

ORDER

Based on the foregoing Stipulation of the parties, it is hereby ORDERED as follows:

1. Pursuant to Civil Rule 65(d), Merchant Commerce, LLC and Boris Mizhen (“Defendants”), their agents, officers, contractors, directors, shareholders, employees, subsidiary companies or entities, affiliated or related companies and entities, assignees, and successors-in-interest, and those in active concert or participation with them, are permanently enjoined from:

a. knowingly sending, transmitting, or advertising in, or directing, aiding, facilitating or conspiring with others to send, transmit, or advertise in, any commercial electronic communication of any kind that is in violation of any state or federal law, including but not limited to Washington’s Commercial Electronic Mail Act or the federal CAN-SPAM Act; and

b. knowingly using, or directing, aiding, facilitating, causing, or conspiring with others to use the computers or computer networks of Microsoft’s communication services, including but not limited to MSN Internet Access or MSN Hotmail, in violation of or inconsistent with MSN Terms of Use located at <http://privacy.msn.com/tou/>; and

c. obtaining, compiling, selling, trafficking in, or trading, or directing, aiding, or conspiring with others to obtain, compile, sell, traffic in, or trade e-mail addresses for the sending or delivery of any unsolicited bulk or unsolicited commercial electronic communications in violation of any state or federal law; and

d. opening, creating or accessing, or directing, aiding, facilitating or conspiring with others to open, create, or access any Microsoft’s Communication Services accounts, including but not limited to MSN Internet Access or MSN Hotmail e-mail accounts; inconsistent with MSN Terms of Use; and

1 e. selling, offering for sale or distributing, or directing, aiding, or
2 conspiring with others to sell, offer for sale or distribute any software that allows the
3 user to send unsolicited bulk or unsolicited commercial electronic communications to
4 any MSN Communication Services, including MSN Internet Access or MSN Hotmail,
5 or any other Internet subscriber.

6 2. Effect of Violation of this Injunction

7 a. *Acknowledgement of Third-Party Beneficiaries.* In the event that a
8 violation of this Injunction by Defendants results in harm to any third parties, the aggrieved
9 third parties shall have and may properly assert against Defendants any and all rights under
10 this Injunction in relation to said harm as could Microsoft, in the event that Microsoft had
11 been the victim of said harm.


12 b. *Damages to Third Parties In the Event of Breach.* Defendants agree
13 that in the event that any term of this Injunction is violated and that violation harms any third
14 parties, and any such violation is proved to this Court or any other Court of competent
15 jurisdiction, Defendants shall be liable for the following liquidated damages:

16 i. *Claim by Internet Service Provider.* In the event the claim is
17 asserted by an Internet Service Provider, liquidated damages of the GREATER of \$25,000 or
18 \$2.00 per 1000 electronic communications sent, corresponding to the claimant's reputation
19 and lost profit damages only (*i.e.*, the claimant may also prove and recover its other categories
20 of damages in addition to the liquidated damages for reputation/lost profits). The claimant
21 shall also recover its associated attorneys' fees, expenses, and costs.

22 ii. *Claim by End-User.* In the event the claim is asserted by an
23 individual end-user, domain owner, or Internet subscriber (*i.e.*, a victim end-user on the
24 Internet), liquidated damages of \$1,000 per e-mail, plus all associated attorneys' fees,
25 expenses, and costs.
26

3. Each of the Defendants shall provide a copy of this Stipulated Permanent Injunction to each employee, agent, contractor or affiliate acting on his or its behalf in regard to any electronic marketing.

March


The Honorable John P. Erlick